

DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF WORKERS' COMPENSATION

NOTICE OF PROPOSED RULEMAKING

RULE CHAPTER NO.: RULE CHAPTER TITLE:

69L-5 Rules for Self-Insurers under the Workers' Compensation Act

RULE NO.: RULE TITLE:

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69L-5.101 Definitions (Repealed)

QUALIFYING FOR SELF-INSURANCE

69L-5.102 General Requirements (Repealed)

69L-5.103 Application (Repealed)

69L-5.104 Alternate Method of Application (Repealed)

RETENTION, REVOCATION, AND WITHDRAWAL

69L-5.105 General Requirements (Repealed)

69L-5.106 Financial Statement or Financial Summary (Repealed)

69L-5.107 Actuarial Reports (Repealed)

69L-5.108 Security Deposits (Repealed)

69L-5.109 Excess Insurance (Repealed)

69L-5.110 Experience Records (Repealed)

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SERVICING FOR SELF-INSURERS

69L-5.112 General Requirements (Repealed)

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PURPOSE AND EFFECT: Rule Chapter 69L-5, F.A.C. is being amended to concurrently repeal and replace all existing rules with new rules which have been restructured and renumbered to promote clarity and efficiencies to the process by which self-insured employers comply with the duties and obligations associated with the privilege of self-insuring pursuant to Chapter 440, Florida Statutes. The purpose of Rule Chapter 69L-5, F.A.C., is to interpret and implement provisions of Chapter 440, Florida Statutes, regarding regulation by the Department of Financial Services and the Florida Self-Insurers Guaranty Association, Inc. of entities self-insuring the payment of compensation for Florida employees. The proposed new rules address the scope of the self-insurance authorization, the required filings, record maintenance and audit processes for self-insurers, the self-insurance process for both governmental entities and members and former members of the Florida Self-Insurers Guaranty Association, Inc., and the application process for and regulations regarding servicing entities. The proposed new rules also adopt forms for use with said rules. The proposed new rules differ from the existing self-insurer rules in various ways, including increasing the minimum net worth requirement to qualify to self-insure and by establishing new guidelines to be used in determining the financial strength of current and former self-insurers. In addition, the proposed new rules require security deposits for current and former self-insurers to be based on the entities' long term issuer credit rating in order to create a more structured and objective system for determining financial strength necessary to ensure timely payment of current and future claims. The proposed new rules also outline the penalties for self-insurers who late-file reports, fail to file them, fail to maintain loss records, or misclassify losses or other data which impacts the calculation and collection of assessments for the Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund. Further, the proposed new rules include a change in the specific excess insurance requirements regarding the

maximum retention amount allowed without additional approval, provide for an electronic version of Form DFS-F2-SI-17, Unit Statistical Report, and eliminate the alternative method of application to self-insure.

**SUMMARY:** Concurrently repeals all existing rules in Rule Chapter 69L-5, F.A.C., replacing them with proposed new rules which have been restructured and revised to clarify regulatory guidelines for employers self-insuring payment of compensation for employees, pursuant to Chapter 440, Florida Statutes. Among the proposed revisions included are those which address requirements regarding the financial strength, credit quality, net worth, security deposits, and excess insurance associated with the self-insurance process; provisions relating to penalties for self-insurers filing late reports, and those who fail to file or otherwise fail to comply with the proposed rules.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:**

No SERC has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

**RULEMAKING AUTHORITY:** 440.38(1), (2), (3), 440.385(6), 440.525(2), 440.591, F.S.

**LAW IMPLEMENTED:** 440.02(24), 440.101, 440.102, 440.1025, 440.38(1), (2), (3), 440.385(1), (3), (6), 440.525, F.S.

**IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):**

**DATE AND TIME:** Wednesday, June 24, 10:00 a.m. -12:00 p.m.

**PLACE:** 104J Hartman Bldg., 2012 Capital Circle Southeast, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS:

Robin Ippolito, Bureau Chief, Bureau of Monitoring and Audit, Division of Workers' Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4224, phone (850) 413-1775.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least five (5) calendar days before the workshop and hearing by contacting the person listed above.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**GENERAL REQUIREMENTS**

**69L-5.101 Definitions**

*Rulemaking Authority 440.38(2)(b), 440.591 FS. Law Implemented 440.38(1)(b) FS. History—New 10-1-82, Amended 12-17-85, Formerly 38F-5.30, Amended 3-11-87, 8-28-91, 12-19-93, Formerly 38F-5.030, Amended 5-19-97, Formerly 38F-5.101, 4L-5.101, Amended 3-8-06, Repealed.*

**QUALIFYING FOR SELF-INSURANCE**

**69L-5.102 General Requirements**

*Rulemaking Authority 440.38(2)(b), 440.591 FS. Law Implemented 440.38(6) FS. History—New 5-19-97, Formerly 38F-5.102, 4L-5.102, Amended 3-8-06, 10-29-06, Repealed.*

**69L-5.103 Application**

*Rulemaking Authority 440.38(2)(b), 440.591 FS. Law Implemented 440.38(1)(b) FS. History—New 5-19-97, Formerly 38F-5.103, 4L-5.103, Amended 3-8-06, Repealed.*

### **69L-5.104 Alternate Method of Application**

*Rulemaking Authority 440.591, 440.38(2)(b) FS. Law Implemented 440.38(1)(b), (2)(b) FS. History–New 10-1-82, Amended 12-25-84, Formerly 38F-5.44, Amended 2-3-88, 6-12-91, 12-19-93, 5-14-96, Formerly 38F-5.044, Amended 5-19-97, Formerly 38F-5.104, 4L-5.104, Repealed\_\_\_\_\_.*

## **RETENTION, REVOCATION, AND WITHDRAWAL**

### **69L-5.105 General Requirements**

*Rulemaking Authority 440.38(1)(b), (2)(b) FS. Law Implemented 440.38(1)(b), (2)(b) FS. History–New 5-19-97, Formerly 38F-5.105, 4L-5.105, Repealed\_\_\_\_\_.*

### **69L-5.106 Financial Statement or Financial Summary**

*Rulemaking Authority 440.38(2)(b), 440.591 FS. Law Implemented 440.38(1)(b) FS. History–New 10-1-82, Formerly 38F-5.47, Amended 6-12-91, 12-19-93, 5-14-96, Formerly 38F-5.047, Amended 5-19-97, Formerly 38F-5.106, 4L-5.106, Amended 3-8-06, Repealed\_\_\_\_\_.*

### **69L-5.107 Actuarial Reports**

*Rulemaking Authority 440.38(1), (2) FS. Law Implemented 440.38(1), (2) FS. History–New 5-19-97, Formerly 38F-5.107, 4L-5.107, Repealed\_\_\_\_\_.*

### **69L-5.108 Security Deposits**

*Rulemaking Authority 440.38(1)(b) FS. Law Implemented 440.38(1)(b) FS. History–New 5-19-97, Formerly 38F-5.108, 4L-5.108, Repealed\_\_\_\_\_.*

### **69L-5.109 Excess Insurance**

*Rulemaking Authority 440.38(1)(b) FS. Law Implemented 440.38(1)(b) FS. History–New 10-1-82, Formerly 38F-5.36, Amended 2-3-88, 12-19-93, Formerly 38F-5.036, Amended 5-19-97, Formerly 38F-*

5.109, 4L-5.109, Repealed\_\_\_\_\_.

### **69L-5.110 Experience Records**

*Rulemaking Authority 440.38(1)(b), (2)(b), (3), 440.385 FS. Law Implemented 440.38(1)(b), (2)(b), (3), 440.385 FS. History—New 5-19-97, Formerly 38F-5.110, 4L-5.110, Repealed\_\_\_\_\_.*

### **69L-5.111 Late Reports; Penalties**

*Rulemaking Authority 440.38(1)(b), (2)(b), 440.51(6)(b), 440.5705 FS. Law Implemented 440.38(1)(b), (2)(b), 440.51, 440.102, 624.24 FS. History— New 10-1-82, Formerly 38F-5.38, Amended 12-19-93, Formerly 38F-5.038, Amended 5-19-97, Formerly 38F-5.111, 4L-5.111, Repealed\_\_\_\_\_.*

## **SERVICING FOR SELF-INSURERS**

### **69L-5.112 General Requirements**

*Rulemaking Authority 440.38(1)(b), (2), (4)(b), 440.49(1)(a), 440.56(4) FS. Law Implemented 440.20(16), 440.38(1)(b), (2), 440.49(1)(a), 440.56(4) FS. History—New 10-1-82, Formerly 38F-5.31, Amended 12-19-93, Formerly 38F-5.031, Amended 5-19-97, Formerly 38F-5.112, 4L-5.112, Repealed\_\_\_\_\_.*

### **69L-5.113 Application to Provide Servicing**

*Rulemaking Authority 440.38(1)(b), (2), (4)(b), 440.56(4) FS. Law Implemented 440.38(1)(b), (2), (4)(b), 440.56(4) FS. History—New 10-1-82, Amended 12-25-84, Formerly 38F-5.40, Amended 12-19-93, Formerly 38F-5.040, Amended 5-19-97, Formerly 38F-5.113, 4L-5.113, Repealed\_\_\_\_\_.*

### **69L-5.114 Retaining Authorization as Service Company; Recertification**

*Rulemaking Authority 440.591, 440.38(2)(a) FS. Law Implemented 440.20(16), 440.38(1)(b), (2)(a), (b),*

*(4)(b) FS. History—New 10-1-82, Amended 12-25-84, Formerly 38F-5.41, Amended 6-12-91, 12-19-93, Formerly 38F-5.041, Amended 5-19-97, Formerly 38F-5.114, 4L-5.114, Repealed \_\_\_\_\_.*

### **69L-5.115 Withdrawal of Authorization**

*Rulemaking Authority 440.38(1)(b), (3)(b)5. FS. Law Implemented 440.38(2), (3) FS. History—New 10-1-82, Formerly 38F-5.42, Amended 12-19-93, Formerly 38F-5.042, Amended 5-19-97, Formerly 38F-5.115, 4L-5.115, Repealed \_\_\_\_\_.*

## **PAYROLL AND CLAIMS RECORDS**

### **69L-5.116 Review and Audit**

*Rulemaking Authority 440.38(2)(b), 440.51(6)(b) FS. Law Implemented 440.20(16)(c), 440.38(1)(b), (2)(b) FS. History—New 10-1-82, Formerly 38F-5.51, Amended 12-19-93, Formerly 38F-5.051, Amended 5-19-97, Formerly 38F-5.116, 4L-5.116, Repealed \_\_\_\_\_.*

## **FORMS, MANUALS, AND INSTRUCTIONS**

### **69L-5.117 Forms, Manuals, and Instructions**

*Rulemaking Authority 440.57, 440.5705, 440.591 FS. Law Implemented 440.381, 440.57, 440.5705, 624.316, 624.424 FS. History—New 5-19-97, Formerly 38F-5.117, 4L-5.117, Repealed \_\_\_\_\_.*

## **GENERAL REQUIREMENTS**

### **69L-5.201 Definitions**

(1) When used in these rules, the following words or terms shall mean:

(a) “Actuarial Report” – A report signed by a member of the American Academy of Actuaries providing an opinion of the appropriate present value of the self-insured reserves incurred in this state, using a four percent (4%) discount rate, for current and future claims.

(b) “Affiliated Self-Insurer” – Two or more entities affiliated by common majority ownership, as defined in the NCCI Experience Rating Plan Manual for Workers’ Compensation and Employers Liability Insurance (filed and approved by the Florida Office of Insurance Regulation), which do not have a parent company to hold the self-insurance authorization, and which are approved by the Department to fund their workers’ compensation liabilities as prescribed in Section 440.38(1)(b), F.S.

(c) “Alien Corporation” – A corporation formed under the laws of any country other than the United States.

(d) “A. M. Best Company” – An organization recognized by the U.S. Securities and Exchange Commission as a nationally recognized statistical rating organization whose ratings are permitted to be used for regulatory purposes.

(e) “Anniversary Rating Date” – The effective month and day of the beginning of the self-insurance authorization and each anniversary thereafter unless a different date is established.

(f) “Association” – The Florida Self-Insurers Guaranty Association, Inc.

(g) “Authorized Representative” – An individual or company authorized by the Department to operate on behalf of the Department; or an individual or company authorized by the Association to operate on behalf of the Association.

(h) “Credit Rating” – A long-term issuer credit rating issued by Moody’s Investors Service, Standard & Poor’s or Fitch Ratings. A credit rating assigned to a specific debt issue is not an acceptable substitute for a long-term issuer credit rating.

(i) “Current Self-Insurer” – An employer authorized by the Department to fund its workers’ compensation liabilities as prescribed in Section 440.38(1)(b) or (6), F.S., whose authorization to self insure has not been revoked or voluntarily terminated.

(j) “Department” – Florida Department of Financial Services.

(k) “Division” – The Division of Workers’ Compensation within the Florida Department of Financial Services.

(l) “F.A.C.” – Florida Administrative Code.

(m) “F.S.” – Florida Statutes

(n) “FSIGA Member” – A Current Self-Insurer or Former Self-Insurer authorized by the Department as defined in Sections 440.02(24)(a) and 440.38(1)(b), F.S., other than self-insurers which are Public Utilities or Governmental Entities.

(o) “Financial Statement(s)” – A presentation of financial data, including accompanying notes, derived from accounting records that purports to show financial position and intended to communicate an entity’s economic resources or obligations at a point in time, and the results of operations and cash flows for a period of time, in accordance with Generally Accepted Accounting Principles and presented in the English language.

(p) “Former Self-Insurer” – An employer authorized by the Department to fund its workers’ compensation liabilities as prescribed in Section 440.38(1)(b) or (6), F.S., whose authorization has been revoked or voluntarily terminated with remaining outstanding workers’ compensation liabilities.

(q) “Generally Accepted Accounting Principles” – Accounting principles generally accepted in the United States of America in effect as of June 1, 2006, including, but not limited to, Accounting Principles Board Opinions Nos. 1 to 31 as published by the American Institute of

Certified Public Accountants, and statements of accounting standards and interpretations thereof, as published by the Financial Accounting Standards Board (FASB). These materials are entitled Original Pronouncements 2008/2009 Edition, Vols. I, II, & III, dated June 1, 2008, and available from FASB, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116, 1(800) 748-0659, <http://www.fasb.org>.

(r) “Generally Accepted Auditing Standards” – Auditing standards generally accepted in the United States of America in effect as of January 1, 2009, including, but not limited to, general, field work and reporting standards approved and adopted by the membership of the American Institute of Certified Public Accountants (AICPA), as amended by the AICPA Auditing Standards Board (ASB), standards promulgated by the ASB in the form of Statements on Auditing Standards and standards promulgated by the Public Company Accounting Oversight Board (PCAOB). The AICPA materials are entitled Codification of Statements on Auditing Standards, dated January 1, 2009, available from the AICPA at <http://www.cpa2biz.com> or call 1 (888) 777-7077. The rules and standards of the PCAOB are available at no charge at <http://www.pcaobus.org>.

(s) “Governmental Entity” – The state and its boards, bureaus, departments, and agencies and all of its political subdivisions which employ labor, and the state universities, pursuant to Section 440.38(6), F.S.

(t) “Investment Grade Credit Rating” – A long-term issuer credit rating equal to or higher than “Baa3”, “BBB-”, or “BBB-”, issued by Moody’s Investors Service, Standard & Poor’s or Fitch Ratings, respectively. A credit rating assigned to a specific debt issue is not an acceptable substitute for a long-term issuer credit rating.

(u) “Manual Premium” – Premium determined by multiplying the payroll (segregated into the proper workers’ compensation job classifications) times the manual rates per \$100 of payroll in effect at the start of the payroll period covered, as further defined in the NCCI Basic Manual for Workers’ Compensation and Employers’ Liability Insurance (filed and approved by the Florida Office of Insurance Regulation).

(v) “NCCI” – The National Council on Compensation Insurance, Inc.

(w) “Net Worth” – Stockholders’ equity, owners’ equity or net assets as shown on the balance sheet of the Financial Statements.

(x) “Qualified Servicing Entity” – Any company approved by the Department to adjust and submit workers’ compensation claims to the Division and/or provide safety services and loss control on behalf of the self-insurer.

(y) “Security Deposit” – A security deposit conforming to the requirements of Section 440.38(1)(b)4., F.S.

(z) “Specific Excess Insurance Policy” – A specific excess workers’ compensation insurance policy approved by the Florida Office of Insurance Regulation which provides for the actual transfer of risk to the excess carrier.

(aa) “Standard Premium” – As defined in the NCCI Basic Manual for Workers’ Compensation and Employers’ Liability Insurance (filed and approved by the Florida Office of Insurance Regulation).

(bb) “Successor Entity” – Any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of a Current Self-Insurer or Former Self-Insurer, pursuant to Chapter 440, F.S.

Rulemaking Authority 440.02(24), 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.

### **69L-5.202 Scope of Self-Insurance Authorization**

(1) Approval of a self-insurance authorization in accordance with Section 440.38, F.S., and these rules will be continuous unless and until revoked or voluntarily terminated.

(2) The self-insurance authorization of a Current Self-Insurer is restricted to the authorization holder and its wholly or majority owned subsidiaries.

(3) Where the Current Self-Insurer is an Affiliated Self-Insurer, the self-insurance authorization is restricted to entities affiliated by common majority ownership and their wholly or majority owned subsidiaries.

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), FS. History – New \_\_\_\_\_.

## **UNIVERSAL REQUIREMENTS**

### **Required Filings, Records Maintenance and Audit**

#### **69L-5.203 Payroll Reporting**

(1) Self-Insurers shall report payroll data for all entities covered under the self-insurance authorization using Form DFS-F2-SI-5 (Self-Insurer Payroll Report), as incorporated by reference into Rule 69L-5.231, F.A.C. Failure to submit the required payroll reports, understatement or concealment of payroll, or the misrepresentation of employee duties so as to avoid proper classification shall constitute good cause for revocation of the self-insurance authorization in addition to civil penalties specified in Rule 69L-5.217, F.A.C.

(a) Current Self-Insurers and Former Self-Insurers shall complete Form DFS-F2-SI-5 by submitting payroll by classification code for the latest completed period beginning on the Anniversary Rating Date.

(b) Former Self-Insurers shall submit this report until the final payroll period has been reported.

(c) Current Self-Insurers shall submit Form DFS-F2-SI-5 no later than sixty (60) days after their Anniversary Rating Date. Former Self-Insurers shall submit their final Form DFS-F2-SI-5 no later than ninety (90) days after the revocation or voluntary termination of the self-insurance authorization.

1. Governmental Entities and Public Utilities shall submit Form DFS-F2-SI-5 to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

2. FSIGA Members shall submit Form DFS-F2-SI-5 to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.

**69L-5.204 Maintenance of Payroll Records, Review and Audit**

(1) The payroll records of all Current Self-Insurers and Former Self-Insurers shall be open for inspection and audit by the Department, or its Authorized Representative, during regular business hours. Self-insurers are required to maintain payroll records that reflect a true and accurate division by the classification codes contained in the NCCI SCOPES of Basic Manual Classifications and the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance (filed and approved by the Florida Office of Insurance Regulation) so the proper classification code for each employee may be determined. If such records are not maintained, then the entire payroll shall be presumed to be within the classification code to which the highest manual rate is applicable. To ensure their availability for audit purposes, the records shall be retained for five (5) years from the end of the payroll period. The location of these records shall be provided to the Department upon submission of the application for self-insurance and updated within fifteen (15) days of any relocation.

(2) At the conclusion of the audit conducted by the Department or its Authorized Representative, a preliminary report shall be prepared and sent to the self-insurer. The preliminary report shall identify any payroll or classification deficiencies. The self-insurer shall have thirty (30) days from the date of receipt to review and respond to the Department's preliminary report. The Department shall review the response and issue a final report.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.*

### **69L-5.205 Loss Data Reporting**

(1) Current Self-Insurers and Former Self-Insurers shall submit loss data for all entities covered under the self-insurance authorization on Form DFS-F2-SI-17, as incorporated by reference into Rule 69L-5.231, F.A.C., or the electronic equivalent provided by the Department.

Failure to submit the required loss data forms or material understatement or concealment of data shall constitute good cause for revocation of the self-insurance authorization in addition to civil penalties specified in Rule 69L-5.217, F.A.C..

(a) The Division or the Association shall, within at least ten (10) days prior to the evaluation date, advise each self insurer of the covered periods for the submission of the loss data.

(b) Current Self-Insurers will complete Form DFS-F2-SI-17 or the electronic equivalent of Form DFS-F2-SI-17 by submitting loss data for the current evaluation year and the prior two (2) evaluation years.

(c) Former Self-Insurers shall continue to submit this report until the loss data for the final period of authorization has been reported for three (3) years.

(d) The completed Form DFS-F2-SI-17 or the electronic equivalent of Form DFS-F2-SI-17 shall be mailed or transmitted to the Division or the Association no later than sixty (60) days after the evaluation date.

1. Governmental Entities who are unable to transmit an electronic version of Form DFS-F2-SI-17 shall mail the completed Form DFS-F2-SI-17, no later than 60 days after the evaluation date to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

2. FSIGA Members who are unable to transmit the electronic version of Form DFS-F2-SI-17 shall mail the completed Form DFS-F2-SI-17 to:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

(e) The Division will promulgate the experience modification using the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance and the NCCI Experience Rating Plan Manual for Workers' Compensation and Employers' Liability Insurance (filed and approved by the Florida Office of Insurance Regulation).

(f) The experience modification shall be used in the calculation and collection of assessments for the Workers' Compensation Administration Trust Fund, the Special Disability Trust Fund, and the Florida Self-Insurers Guaranty Association, Inc.

(g) The Division shall provide a copy of the experience rating worksheet to each self-insured employer and FSIGA.

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.

### **69L-5.206 Maintenance of Loss Data Records, Review and Audit**

(1) All records supporting the submitted Form DFS-F2-SI-17 or its electronic equivalent shall be open for inspection and audit by the Department or its Authorized Representative, during regular business hours. Self-insurers are required to maintain loss records that reflect a true and accurate division by the classification codes, status type, and injury codes contained in the NCCI Workers' Compensation Statistical Plan Manual (filed and approved by the Florida Office of Insurance Regulation) and the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance (filed and approved by the Florida Office of Insurance Regulation) so the proper classification code, status type, and injury code for each accident may

be determined. To ensure their availability for audit purposes, the records shall be retained for five (5) years from the last date the claims data was used for calculation of the experience modification. The location of these records shall be provided to the Department upon submission of the application for self-insurance and updated within fifteen (15) days of any relocation.

(2) At the conclusion of the audit conducted by the Department or its Authorized Representative, a preliminary report shall be prepared and sent to the self-insurer. The preliminary report shall identify any payroll, loss, or classification deficiencies. The self-insurer shall have thirty (30) days from the date of receipt to review and respond to the Department's preliminary report. The Department shall review the response and issue a final report.

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.

### **69L-5.207 Outstanding Liabilities Reporting**

(1) Current Self-Insurers and Former Self-Insurers, other than Governmental Entities, shall report their outstanding self-insured workers' compensation liabilities for all entities covered under the self-insurance authorization on Form DFS-F2-SI-20 (Report of Outstanding Workers' Compensation Liabilities), as incorporated by reference into Rule 69L-5.231, F.A.C. This includes all outstanding liabilities of Former Self-Insurers for which the Current Self-Insurer is the Successor Entity. Form DFS-F2-SI-20 shall be accompanied by a loss run substantiating all amounts reported on the form, be signed by an Authorized Representative of the Self-Insurer or its Qualified Servicing Entity, and be submitted no later than 120 days after the end of the self-insurer's fiscal year. The evaluation date shall not be prior to the end of the self-insurer's latest fiscal year. Failure to submit the required Report of Outstanding Workers' Compensation

Liabilities, or material understatement or concealment of loss reserves, shall constitute good cause for revocation of the self-insurance authorization in addition to civil penalties specified in Rule 69L-5.217, F.A.C.

(a) FSIGA Members shall submit Form DFS-F2-SI-20 to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.*

#### **69L-5.208 Maintenance of Outstanding Liabilities Records, Review and Audit**

(1) All records supporting Form DFS-F2-SI-20 (Report of Outstanding Workers' Compensation Liabilities) shall be open for inspection and audit by the Department, the Association, or their Authorized Representative, during regular business hours. Each self-insurer is required to maintain all records supporting Form DFS-F2-SI-20. To ensure their availability for audit purposes, the records shall be retained for five (5) years after closing of a claims file.

(2) The location of these records shall be provided to the Department or Association upon submission of the application for self-insurance and updated within fifteen (15) days of any relocation.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.*

#### **69L-5.209 Financial Statements Reporting**

(1) Current Self-Insurers and Former Self-Insurers, other than Governmental Entities, shall submit their Financial Statements no later than 120 days after the end of their fiscal year. Failure to submit the required Financial Statements shall constitute good cause for revocation of the self-insurance authorization in addition to civil penalties specified in Rule 69L-5.217, F.A.C.

(a) The Financial Statements shall meet the following requirements:

1. The Financial Statements shall be in the name of the entity holding the self-insurance authorization,

2. The Financial Statements shall demonstrate that the self-insurer has the financial strength necessary to ensure the timely payment of all current and future claims,

3. The Financial Statements shall show a Net Worth of the greater of \$10,000,000 U.S. or three (3) times Standard Premium, and;

4. The Financial Statements shall be audited in accordance with Generally Accepted Auditing Standards.

5. Financial statements submitted for Current Self Insurers and Former Self Insurers under an authorization granted prior to January 1, 1997, are not required to be audited in accordance with Generally Accepted Auditing Standards.

(b) All legal entities included under the self-insurance authorization shall submit Financial Statements in accordance with this rule. Separate Financial Statements shall be submitted for each entity unless consolidated or combined Financial Statements are submitted. All Financial Statements submitted must comply with the provisions of this rule. However, for purposes of meeting the Net Worth requirement, the Net Worths of the companies comprising an Affiliated Self-Insurer may be combined.

(c) If a majority of the assets and/or stocks of a Current Self-Insurer are purchased by a Successor Entity and the Current Self-Insurer can no longer provide Financial Statements in its own name, then the Current Self-Insurer's authorization shall be revoked unless the Successor Entity becomes a Current Self-Insurer pursuant to this rule or the Current Self-Insurer voluntarily terminates its self-insurance authorization. Application for a self-insurance authorization by the Successor Entity must be made within thirty (30) days of the effective date of the acquisition or restructuring.

(d) The Successor Entity of a Former Self-Insurer shall submit its Financial Statements in accordance with this rule.

(e) The Successor Entity shall acknowledge liability for payment of the Former Self-Insurer's self-insured workers' compensation liabilities by providing a written statement executed by a senior executive officer of the Successor Entity.

(f) FSI GA Members shall submit Financial Statements to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.

### **69L-5.210 Actuarial Reports**

(1) Current Self-Insurers and Former Self-Insurers, other than Governmental Entities, that do not have Investment Grade Credit Ratings shall be required to submit Actuarial Reports within 120 days after the end of their fiscal year or any other date requested by the Department or the Association.

(a) Actuarial Reports shall have a valuation date not more than 180 days prior to the date submitted to the Department or the Association.

(b) If requested by the Department or the Association, any Current Self-Insurer or Former Self-Insurer, other than a Governmental Entity, shall be required to submit an Actuarial Report.

(2) The Department or the Association may require that the Actuarial Report include a forecast of loss reserves to a future date.

(3) FSIGA Members shall submit Actuarial Reports to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

### **69L-5.211 Changes in Anniversary Rating Date**

(1) Any Current Self-Insurer desiring to change its Anniversary Rating Date shall submit a request in writing.

(a) Governmental Entities shall submit requests to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

(b) FSIGA Members shall submit requests to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

(2) Upon receipt of the written request, the Division or the Association shall advise the self-insurer in writing within thirty (30) days as to the effective date of the change, if approved, using the NCCI Workers' Compensation Experience Rating Plan Manual for Workers' Compensation and Employers' Liability Insurance (filed and approved by the Florida Office of Insurance Regulation) to determine this date.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

#### **69L-5.212 Contact Information Reporting**

(1) Current Self-Insurers and Former Self-Insurers shall provide written notification of changes in their contact information within thirty (30) days of the effective date of the change.

Notification shall be submitted as follows:

(a) Governmental Entities shall submit contact information to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

(b) FSIGA Members shall submit contact information to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

### **69L-5.213 Subsidiary, Affiliate and Location Reporting**

(1) Current Self-Insurers shall provide written notification of changes in the names and addresses, as well as changes in the structure, of the self-insurer, its affiliates and their wholly or majority owned subsidiaries, along with the Federal Employer Identification Number (FEIN), fictitious names, and percentage of ownership for each legal entity included under the self-insurance authorization within thirty (30) days of the effective date of the change. Current Self-Insurers shall also provide written notification of changes in the addresses of all operating locations with employees within the State of Florida, which are included under the self-insurance authorization within thirty (30) days of the effective date of the change.

(2) Current Self-Insurers shall annually certify the accuracy of their subsidiary, affiliate and location information. Such certification shall be signed by an officer of the Current Self-Insurer.

(3) Notifications of changes and annual certifications shall be submitted as follows:

(a) Governmental Entities shall submit location information to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

(b) FSIGA Members shall submit location information to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

**69L-5.214 Indemnity Agreements for Affiliated Self-Insurers**

(1) Affiliated Self-Insurers must execute a new Form DFS-F2-SI-11 (Indemnity Agreement), as incorporated by reference into Rule 69L-5.231, F.A.C., within thirty (30) days of changes in the affiliates included under the self-insurance authorization. Form DFS-F2-SI-11 shall be executed by an officer of each affiliated entity to be included under the self-insurance authorization. The executed form shall be submitted to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

**69L-5.215 Parental Guaranty**

(1) Notwithstanding any other provisions of these Rules to the contrary, if a parent company that directly or indirectly owns 100% of a Current Self-Insurer, Former Self-Insurer or applicant for self-insurance elects to execute Form DFS-F2-SI-10 (Parental Guaranty and Corporate Resolution), as incorporated by reference in to Rule 69L-5.231, F.A.C., then:

(a) the Financial Statements of the parent company shall be used to apply the financial statement requirements of Rules 69L-5.209(1) and 69L-5.225(1), F.A.C.,

(b) the Credit Rating of the parent company shall be used to determine the amount of the Security Deposit in accordance with Rule 69L-5.218, F.A.C.,

(c) the Net Worth of the parent company shall be used to determine the excess insurance requirements in accordance with Rule 69L-5.219(1)(a), F.A.C.,

(d) the Net Worth of the parent company shall be used to apply the Net Worth requirements in Rules 69L-5.209(1)(a)3. and 69L-5.225(1)(a), F.A.C., and

(e) the Credit Rating of the parent company shall be used to apply the minimum requirements in Rule 69L-5.225(1)(b), F.A.C., and the initial security deposit requirements of Rule 69L-5.225(1)(e), F.A.C.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

### **69L-5.216 Provision of Benefits and a Safe Working Environment by Self-Insurers**

(1) It shall be the sole responsibility of Current Self-Insurers and Former Self-Insurers to provide for competent persons to service their self-insurance program in the areas of claims adjusting, safety engineering and loss control. This shall be done through either the use of their own employees, who are determined by the Department to be competent in these areas, or by contracting with a Qualified Servicing Entity approved by the Department to provide these services. A list of Qualified Servicing Entities may be obtained by contacting the Department at:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

(2) Current Self-Insurers and Former Self-Insurers choosing to use their own employees to provide these services must obtain prior approval from the Department and shall submit Form DFS-F2-SI-19 (Certification of Servicing for Self-Insurers), as incorporated by reference into Rule 69L-5.231, F.A.C., within thirty (30) days of a change in servicing arrangement and at least every three (3) years thereafter.

(3) Current Self-Insurers or Former Self-Insurers contracting with Qualified Servicing Entities must file Form DFS-F2-SI-19 within thirty (30) days of entering into a servicing contract.

(a) For Governmental Entities, Form DFS-F2-SI-19 shall be obtained from and submitted to the:

Department of Financial Services  
Division of Workers' Compensation  
Bureau of Monitoring and Audit/Self-Insurance  
200 East Gaines Street  
Tallahassee, Florida 32399-4224

(b) For FSIGA Members, Form DFS-F2-SI-19 shall be obtained from and submitted to the:

Florida Self-Insurers Guaranty Association, Inc.  
1427 E. Piedmont Dr., 2<sup>nd</sup> Floor  
Tallahassee, Florida 32308

(4) Failure to submit the required Certification of Servicing shall constitute good cause for revocation of the self-insurance authorization in addition to civil penalties specified in Rule 69L-5.217, F.A.C.

(5) In the event that self-insured claims are transferred to a new Qualified Servicing Entity or the self-insurer assumes responsibility for provision of these services in-house, the previous Qualified Servicing Entity shall provide an accounting of all claims files and claims data sufficiently detailed to permit the new Qualified Servicing Entity or the self-insurer to establish accurate claims, reserving, and accounting data.

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.

### **69L-5.217 Civil Penalties and Fines**

(1) Civil Penalties for Delinquent Reports – Failure to timely file legible and complete forms, reports or documents as required by Section 440.38(2)(b), F.S., or these rules, shall subject the party required to file such form, report, or document to assessment by the Department of a civil penalty. For purposes of this rule, a form, report or document is considered timely filed if postmarked on or before the due date prescribed in this rule. Reports submitted by a Qualified Servicing Entity on behalf of the self-insurer shall be treated as if they were submitted by the self-insurer directly.

(a) Late filed forms, reports, and documents required pursuant to this rule shall be penalized as follows:

1. \$100 for filings 1 to 14 days late.
2. \$2,500 for filings 15 to 30 days late.
3. \$5,000 for filings 31 to 60 days late.

4. For periods greater than sixty (60) days, \$200 per day from the required filing date. Total penalties assessed under this section for a single late filed form, report, or document shall not exceed \$25,000.

(b) These civil penalties are to be applied per occurrence, per form, report, or document. Payment shall be made within fifteen (15) days after receipt of the notification and submitted along with the form, report, or document. Failure to submit the required forms, reports and documents constitutes good cause for revocation of the self-insurance authorization in addition to civil penalties specified in this rule.

(2) A request for an extension of time to file a form, report or document shall be made in writing by the self-insurer or its Qualified Servicing Entity and shall be postmarked no later than fifteen (15) days prior to the due date of the form, report or document. Extensions shall be granted in writing and notice provided to the self-insurer or Qualified Servicing Entity. Such extension shall establish a new one-time due date subject to the same provision for late filing.

(a) For forms, reports, or documents, other than Actuarial Reports requested by the Association and Financial Statements, extensions may be granted by the Division if proof is supplied by the self-insurer or Qualified Servicing Entity that circumstances entirely beyond the control of the self-insurer or its Qualified Servicing Entity have made it impossible to file in a timely manner. Such circumstances shall be limited to:

1. The destruction of the records of the self-insurer or its Qualified Servicing Entity,
2. Delays caused by Acts of God or nature; or,
3. Delays caused by other regulatory processes of the State of Florida or the United States Government.

(b) Clerical errors, personnel turnover, accidental or intentional destruction of forms and records by employees of the self-insurer or its Qualified Servicing Entity or any delays caused by the incompetence of the employees of the self-insurer or its Qualified Servicing Entity shall not be grounds for an extension.

(c) For Financial Statements, extensions may be granted by the Division if proof is supplied by the self-insurer that circumstances entirely beyond the control of the self-insurer have made it impossible to file in a timely manner. Extensions may be granted for up to sixty (60) days if the self-insurer submits draft Financial Statements and provides evidence that the reason for the delay in submittal is entirely beyond the control of the self-insurer. For extensions beyond sixty (60) days from the original due date, circumstances shall be limited to:

1. The destruction of the records of the self-insurer,
2. Delays caused by Acts of God or nature; or,
3. Delays caused by other regulatory processes of the State of Florida or the United States Government.

(3) For consideration of extensions beyond sixty (60) days from the original Financial Statements due date, clerical errors, personnel turnover, accidental or intentional destruction of forms and records by employees of the self-insurer or any delays caused by the incompetence of the employees of the self-insurer shall not be grounds for an extension.

(4) Fines for Delinquent Payment of Assessments – Assessments payable to the Florida Self-Insurers Guaranty Association, Inc., not postmarked by the due date, shall incur a fine of \$100 or 5% of the assessment due, whichever is greater, per month until paid.

(5) All civil penalty and fine payments shall be made payable to the Workers' Compensation Administration Trust Fund and mailed to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, FL 32399-4224

(6) Failure to submit forms, reports, documents, Financial Statements or Actuarial Reports or to remit civil penalties or fines shall be grounds for revocation of the self-insurance authorization.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.*

### **69L-5.218 Security Deposits**

(1) Current Self-Insurers and Former Self-Insurers, other than Governmental Entities, that have a current Investment Grade Credit Rating shall maintain a minimum Security Deposit of \$100,000.

(2) Current Self-Insurers, other than Governmental Entities, that do not have a current Investment Grade Credit Rating shall provide a Security Deposit in an amount equal to the greater of the actuarially determined outstanding loss reserves discounted to present value, using a four percent (4%) discount rate, or the actuarially determined outstanding loss reserves forecasted to a date one year in the future, discounted to such forecasted date using a four percent (4%) discount rate, as calculated in its Actuarial Report. In no case, shall the amount of the Security Deposit be less than \$100,000.

(3) Former Self-Insurers, other than Governmental Entities, that do not have an Investment Grade Credit Rating shall provide a Security Deposit equal to the actuarially determined outstanding loss reserves discounted to present value at a four percent (4%) discount rate. In no case shall the amount of the Security Deposit be less than \$100,000.

(4) In the event that a Current Self-Insurer or Former Self-Insurer does not have a current published Credit Rating, the Association or the Department shall determine an equivalent rating by performing an analysis of the Financial Statements provided in accordance with Rule 69L-5.209, F.A.C., and the amount of the Security Deposit shall be determined using the equivalent rating as the Credit Rating. A Current Self-Insurer or Former Self-Insurer that disagrees with the equivalent rating may provide a current Credit Rating. If the Current Self-Insurer or Former Self-Insurer provides a current Credit Rating, the security deposit requirement will be determined using the current Credit Rating instead of the equivalent rating and any excess security deposit will be released.

(5) As of the effective date of this rule, Current Self-Insurers and Former Self-Insurers that do not have an Investment Grade Credit Rating, or an equivalent rating at least equal to an Investment Grade Credit Rating as determined by the Association, shall provide the required security deposit increase amount in accordance with subparagraph (2) or (3) above, as applicable, within twelve (12) months of the effective date of this rule. However, within this twelve (12) month period, any Current Self-Insurer or Former Self-Insurer who experiences a deterioration in its Credit Rating or equivalent rating as determined by the Association to a Credit Rating that is less than an Investment Grade Credit Rating shall be required to provide an Actuarial Report and to post the security increase amount as determined by subparagraph (2) or

(3) above, as applicable, immediately upon request by the Department. The provisions of this subparagraph expire twelve (12) months after the effective date of this rule.

(6) The Security Deposit shall be maintained until the authorization holder is a Former Self-Insurer who has demonstrated that there is no remaining value to its self-insured workers' compensation claims and the statute of limitations has run on closed claims. Prior to the release of the Security Deposit, the Former Self-Insurer and its Qualified Servicing Entity(ies) shall provide signed affidavits stating that all self-insured workers' compensation claims have been settled or the statute of limitations has run on closed claims.

(7) If the self-insurer is a FSIGA Member, the Security Deposit must be submitted to and executed in favor of the Association. The Security Deposit shall be held by the Association or the Department exclusively for the benefit of workers' compensation claimants. The Security Deposit shall not be subject to assignment, execution, attachment, or any legal process whatsoever, except as necessary to guarantee the payment of workers' compensation benefits under Chapter 440, F.S.

(a) For FSIGA Members, security deposit forms can be obtained from and shall be submitted to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

(8) A Security Deposit shall consist of, at the option of the employer:

(a) A surety bond on Form DFS-F2-SI-4F (Self-Insurer's Surety Bond for FSIGA Member), as incorporated by reference into Rule 69L- 5.231, F.A.C., which shall be issued by a corporation surety authorized to transact surety business by the Florida Department of Financial

Services, Office of Insurance Regulation, and whose financial strength and size ratings from A. M. Best Company are not less than “A” and “V” respectively, or

(b) An irrevocable letter of credit on Form DFS-F2-SI-6 (Self-Insurer’s Irrevocable Letter of Credit), as incorporated by reference into Rule 69L-5.231, F.A.C., which shall be issued by a financial institution located within the State of Florida and the deposits of which are insured through the Federal Deposit Insurance Corporation.

(9) No surety bond shall be terminated and no irrevocable letter of credit shall be allowed to expire, without ninety (90) days prior written notice and a deposit by the self-insurer of some other Security Deposit of equal value within ten (10) business days after such notice. Failure to provide such written notice or failure to timely provide a replacement Security Deposit after such notice shall constitute grounds for the Association or Division to call or sue upon the surety bond or to exercise its rights under the letter of credit. For Former Self-Insurers, a surety bond may be terminated without replacement, but shall not be released until such time as the Former Self-Insurer has demonstrated that there is no remaining value to its self-insured workers’ compensation claims, the statute of limitations has run on closed claims, and the Former Self-Insurer has submitted the signed affidavits in accordance with these rules. Notice shall be submitted to:

(a) For FSIGA Members,

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

**69L-5.219 Excess Insurance**

(1) Current Self-Insurers, other than Governmental Entities, shall maintain a Specific Excess Insurance Policy. Such policy shall have a workers' compensation limit of not less than \$50,000,000.

(a) The self-insured retention of Specific Excess Insurance Policies shall be as follows:

1. The self-insurer's per occurrence retention shall be no more than \$500,000 or 1% of the self-insurer's Net Worth as shown on the self-insurer's latest audited Financial Statements, whichever is greater. The self-insured retention shall be rounded to the nearest \$50,000.

2. A higher self-insured retention may be allowed, if approved by the Department. The Department shall consider the Current Self-Insurer's financial strength in its review of the requested self-insured retention.

(b) Specific Excess Insurance Policies for Current Self-Insurers shall be written by insurance companies licensed in Florida pursuant to Chapters 624, 628 or 629, F.S., and shall be subject to the protection afforded by the Florida Workers' Compensation Insurance Guaranty Association Act (Chapter 631, Part V, F.S.).

(c) If coverage is not available from a company identified above, the Department may accept policies issued without the protection of the Florida Workers' Compensation Insurance Guaranty Association Act issued by insurance companies who have current financial strength and size ratings from A. M. Best Company of not less than "A-" and "VII" respectively.

(d) The Division shall reject any Specific Excess Insurance Policy written by an insurance company which:

1. Does not pay its claims when due; or,

2. Is not in compliance with any requirement of Chapter 624, F.S.

(e) The Specific Excess Insurance Policy shall meet the following requirements:

1. Shall be issued by an insurance company conforming to these rules and shall name the Department as an additional insured for the purpose of notification.

2. Shall not be cancelled except upon sixty (60) days written notice by certified mail to the other party to the policy and to the Department.

(f) Shall be automatically renewable at the expiration of the policy period unless written notice by certified mail is given to the other party to the policy and to the Department sixty (60) days prior to such expiration by the party desiring to cancel or not renew the policy.

(g) Shall provide that any commutation affected under the policy shall not relieve the underwriter of further liability in respect to claims and expenses unknown at the time of such commutation. The underwriter shall not be relieved in regard to closed claims, which may be subsequently revived by or through a competent authority. In the event the underwriter proposes to redeem any future payments as compensation for accidents occurring during the term of the policy, not less than sixty (60) days prior notice of such commutation shall be given to the Department by certified mail by the underwriter or its agent.

(h) Provides that, in the event any commutation is effected, the Department shall have the right to direct that such sum either be placed in trust for the benefit of the injured employee or employees entitled to such future payments of compensation or be invested in approved securities and deposited with the Department to insure such future payments of compensation to the employee or employees entitled thereto. Said commutation must contain a provision that the Department may order that the monies due under the terms of the Specific Excess Insurance Policy be paid directly to the injured employee or such other party as the Department may

appoint. Such an action shall be ordered only if the Department determines that it is necessary to ensure continued benefits to the injured employee.

(i) Contains the provision that in the event of the insolvency of a FSIGA Member, the policy shall reimburse the Association for any monies expended on behalf of the self-insured. Any reimbursement shall be subject to the terms of the contract between the FSIGA Member and the insurance company.

(j) The Specific Excess Insurance Policy shall have no more than one named insured. The named insured shall be the FSIGA Member and its subsidiaries. In the case of an Affiliated Self-Insurer, the named insured shall be all affiliated entities and their subsidiaries.

(k) Contains the provision that coverage under the Specific Excess Insurance Policy extends to all Florida, majority owned, self-insured subsidiaries of the principal named insured.

(2) A binder, providing for at least ninety (90) days coverage, or a certificate of insurance issued by the insurance company or its authorized agent and specifying the terms of the policy, shall be filed within thirty (30) days after the effective date of the policy, provided that this proof of specific excess insurance is not being submitted in support of an application for self-insurance. Excess renewal endorsements specifying the terms of the policy submitted to the Association within thirty (30) days after the renewal date satisfies this requirement. In the event of cancellation or non-renewal of the Specific Excess Insurance Policy, it shall be necessary for the Current Self-Insurer to file proof of replacement specific excess insurance coverage prior to the cancellation or non-renewal date. Copies of all Specific Excess Insurance Policies, complete with all endorsements in the name of the insured, shall be filed within ninety (90) days of the effective date of the policy.

(3) FSIGA Members shall submit Specific Excess Insurance Policies and all related documents and notices to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2<sup>nd</sup> Floor

Tallahassee, Florida 32308

(4) If requested by the Association or the Division, self-insurers shall provide copies of excess insurance policies to support estimated excess insurance recoveries included in their Actuarial Reports provided to the Association or the Division.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

### **69L-5.220 Drug-Free Workplace Premium Credit Program**

(1) In order for self-insurers to receive up to a five percent (5%) credit on the computation of premiums used in the determination of the assessments for the Workers' Compensation Administration Trust Fund, the Special Disability Trust Fund and the Florida Self-Insurers Guaranty Association, Inc., they must certify that they have established a drug-free workplace in accordance with Sections 440.101 and 440.102, F.S.

(2) The certification must be completed using NCCI Form 09-1 (Application for Drug-Free Workplace Premium Credit), as incorporated by reference into Rule 69L-5.231, F.A.C., and shall be filed annually, sixty (60) days prior to their Anniversary Rating Date. The completed Form 09-1 shall be mailed to the:

Department of Financial Services

Division of Workers' Compensation

Assessments Unit

200 East Gaines Street

Tallahassee, FL 32399-4221

(3) Certifications not received prior to the Anniversary Rating Date shall be applied pro rata as of the date the certification is received at the Division.

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented 440.101, 440.102, 440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

**69L-5.221 Safety Program Premium Credit**

(1) In order for self-insurers to receive up to a two percent (2%) credit on the computation of premiums used in the determination of the assessments for the Workers' Compensation Administration Trust Fund, the Special Disability Trust Fund and the Florida Self-Insurers Guaranty Association, Inc., they must certify that they have established a workplace safety program in accordance with Section 440.1025, F.S.

(2) The certification must be completed using the NCCI Form 09-3 (Certification of Employer Workplace Safety Program Premium Credit), as incorporated into Rule 69L-5.231, F.A.C., and shall be filed annually sixty (60) days prior to their Anniversary Rating Date. The completed Form 09-3 shall be mailed to the:

Department of Financial Services

Division of Workers' Compensation

Assessments Unit

200 East Gaines Street

Tallahassee, Florida 32399-4221

(3) Certifications not received prior to the Anniversary Rating Date shall be applied pro rata as of the date the certification is received at the Division.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented 440.1025, 440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

### **69L-5.222 Revocation and Employer Compliance**

(1) Failure to comply with any of the rules herein or with any order of the Department or court of competent jurisdiction within the time prescribed shall be considered good cause for revocation of the self-insurance authorization, within the meaning of Section 440.38(3), F.S. Noncompliance with any of the provisions of the Workers' Compensation Law, Chapter 440, F.S., particularly those relating to time and method of compensation payments, the furnishing of medical treatment and filing of accident and compensation reports, or failure to pay any assessment or penalty, shall likewise be deemed good cause.

(2) Material understatement or concealment of payroll, and material misrepresentation or concealment of employee duties, so as to avoid proper classification shall be considered good cause for revocation of the self-insurance authorization, within the meaning of Section 440.38(3), F.S. and/or action by the Department under Section 440.107, F.S. Material understatement or concealment of data pertinent to the computation and application of an experience modification factor shall be considered good cause for revocation of the self-insurance authorization, within the meaning of Section 440.38(3), F.S. and/or action by the Department under Section 440.107, F.S.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.*

## **SELF-INSURANCE PROCESS FOR GOVERNMENTAL ENTITIES**

### **69L-5.223 Election Process**

(1) The state and its boards, bureaus, departments, and agencies and all of its political subdivisions which employ labor, and the state universities that are electing to self-insure pursuant to Section 440.38(6), F.S., shall submit to the Division for review at least ninety (90) days prior to the preferred effective date of self-insured status, the following information:

(a) Copy of document(s) through which the entity is organized or authorized to operate as a Governmental Entity, including articles of incorporation, grant of authority, or charter, if applicable;

(b) Application for Governmental Self-Insurance, Form DFS-F2-SI-1G, as incorporated by reference into Rule 69L-5.231, F.A.C.;

(c) Application for Governmental Self-Insurance Estimated Payroll, Form DFS-F2-SI-GEP, as incorporated by reference into Rule 69L-5.231, F.A.C.;

(d) Certification of Servicing for Self-Insurers, Form DFS-F2-SI-19, incorporated by reference into Rule 69L-5.231, F.A.C.; and

(e) Workers' Compensation Experience Rating For Non-Affiliate Data, NCCI Form ERM-6, for the current and two (2) preceding years, as set forth in the National Council on Compensation Insurance (NCCI) Experience Rating Plan Manual for Workers' Compensation and Employers Liability Insurance. The notification and supporting documentation shall be submitted to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

(2) Upon receipt of the notification and supporting documentation from an entity defined within the scope of Section 440.38(6), F.S., the Division shall provide to the entity the “Insurer Code #” pursuant to Rule 69L-3.002, F.A.C., prior to the effective date of self-insured status for compliance with filing requirements of Rule Chapters 69L-3 and 69L-7, F.A.C.

(3) Forms adopted. The forms set forth in Rule 69L-5.223 (1)(b-e), F.A.C., as well as the accompanying instructions to the forms, are hereby adopted and incorporated by reference.

Copies of the forms are available from:

Department of Financial Services

Division of Workers’ Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, Florida 32399-4224

(4) The form set forth in Rule 69L-5.223(1)(e), F.A.C., is found within the National Council on Compensation Insurance, Inc. (NCCI) Experience Rating Plan Manual for Workers’ Compensation and Employers Liability Insurance. A copy of the Manual and a one (1) year subscription to any and all updates may be obtained from:

National Council on Compensation Insurance, Inc.

750 Commerce Drive

Boca Raton, FL 33487

Telephone (800) 622-4123, at a cost of \$95.

(a) A copy of the Manual is also available for viewing at:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

2012 Capital Circle, S.E., Hartman Building, Suite 200

Tallahassee, FL 32399-4224.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

### **69L-5.224 Termination**

(1) A Governmental Entity who ceases self-insurance shall notify the Division of such withdrawal and shall continue to file all reports required by this rule with the Division upon withdrawal and thereafter until such time as the employer has satisfied the Division that there is no remaining value to the claims incurred while the employer was self-insured.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

## **SELF-INSURANCE PROCESS FOR FSIGA MEMBERS**

### **69L-5.225 Requirements**

(1) An entity applying for a self-insurance authorization pursuant to Section 440.38(1)(b), F.S., shall meet the following requirements and shall submit a completed application package at least ninety (90) days prior to the desired effective date of the self-insurance authorization:

(a) Net Worth – The applicant's most recent audited Financial Statements shall show a Net Worth of the greater of \$10,000,000 U.S. or three (3) times Standard Premium.

(b) Financial Strength – A current Credit Rating of not less than “Ba3”, “BB-”, or “BB-” issued by Moody's Investors Services, Standard & Poor's or Fitch Ratings, respectively. In the

event an applicant does not have a current published Credit Rating, the Association shall determine an equivalent rating by performing an analysis of the Financial Statements provided in accordance with Rule 69L-5.209, F.A.C., and Rule 69L-5.225, F.A.C., the foregoing financial strength requirement shall be based on the equivalent rating as the Credit Rating. An applicant that disagrees with the equivalent rating may provide a current Credit Rating. If the applicant provides a current Credit Rating, the financial strength requirement shall be based on the current Credit Rating instead of the equivalent rating.

(c) Financial Statements – An applicant shall have at least three (3) years of Financial Statements in the name of the applicant. The Financial Statements for the most recent year shall be audited in accordance with Generally Accepted Auditing Standards. If the Financial Statements for the two (2) years prior to the most recent year have been audited in accordance with Generally Accepted Auditing Standards, the audit reports(s) on these Financial Statements shall also be submitted.

(d) An applicant that does not have three (3) years of Financial Statements in its own name due to a recent purchase or merger, may use the Financial Statements of its predecessor(s), provided there has been no change to the structure of the entity or the line of business which would adversely affect the applicant's financial condition.

(e) Security Deposit – The applicant shall provide a Security Deposit that conforms to the requirements of Rule 69L-5.218, F.A.C. In the event the applicant meets the above financial strength requirement, but does not have an Investment Grade Credit Rating, the applicant shall provide a Security Deposit in an amount equal to the actuarially determined outstanding loss reserves forecasted to a date one year in the future, discounted to such forecasted date using a

four percent (4%) discount rate, as calculated in its Actuarial Report. In no case, shall the amount of the Security Deposit be less than \$100,000.

(f) Specific Excess Insurance Policy Requirements – The applicant shall provide proof of a Specific Excess Insurance Policy that conforms to the requirements of Rule 69L-5.219, F.A.C.

(g) Provision of Benefits and a Safe Working Environment – The applicant shall provide a completed Form DFS-F2-SI-19 (Certification of Servicing for Self-Insurers) detailing the proposed servicing arrangements and accompanying documentation that conforms to the requirements of Rule 69L-5.216, F.A.C.

(h) In order for an application to be considered complete, all required documents must be submitted, including the Security Deposit, proof of Specific Excess Insurance Policy, and Certification of Servicing for Self-Insurers.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

### **69L-5.226 Application Process**

(1) An application for self-insurance shall be made on Form DFS-F2-SI-1 (Application for Self-Insurance), as incorporated by reference into Rule 69L-5.231, F.A.C. An application may be obtained at:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Dr., 2nd Floor

Tallahassee, FL 32308

or:

[www.fsig.org](http://www.fsig.org)

(2) All applications for self-insurance shall be submitted in duplicate at least ninety (90) days prior to the desired effective date. Self-insurance effective dates shall be determined by the Department with consideration given to the date selected by the applicant and shall always be on the first of the month. However, on no occasion shall the effective date be more than six (6) months after the approval date.

(3) The following information shall be submitted in duplicate with the application:

(a) The most recent three (3) years of Financial Statements that conform to the requirements of Rule 69L-5.225, F.A.C.

(b) If the date of the latest Financial Statements is over six (6) months old at the time of application, interim financial statements, up to and including at least the latest fiscal quarter, must be included and must be certified as to their accuracy by a corporate officer, general partner or sole proprietor.

(c) A completed Form DFS-F2-SI-19 (Certification of Servicing for Self-Insurers) detailing the proposed servicing arrangements and accompanying documentation that conforms to the requirements of Rule 69L-5.216, F.A.C.

(d) A list of all entities which the applicant intends to include under its self-insurance authorization in accordance with Rule 69L-5.202, F.A.C., that includes the following information:

1. Percentage of the applicant's ownership interest in each entity,
2. Federal Employer Identification Number (FEIN) of each entity,
3. Addresses of each entity and its operating locations within the State of Florida, and
4. Any fictitious names used by each entity within the State of Florida.

(e) If the applicant is seeking approval as an Affiliated Self-Insurer, Form DFS-F2-SI-11 (Indemnity Agreement) shall be executed by an officer of each affiliated company to be included under the self-insurance authorization.

(f) If the applicant is seeking approval using the Financial Statements of a parent company under Rule 69L-5.215, F.A.C., Form DFS-F2-S1-10 (Parental Guaranty and Corporate Resolution), as incorporate by reference into Rule 69L-5.231, F.A.C., must be executed by a corporate officer of the parent company.

(g) A list of corporate officers, general partners, or sole proprietor as applicable to the corporate structure of the applicant including the resident city and state and the full business address of each.

(h) Certification by a corporate officer, general partner, or sole proprietor stating that the applicant, at the time of application, and until approval of the application, will maintain workers' compensation insurance coverage in compliance with Section 440.38(1)(a), F.S.

(i) Certification by a corporate officer, general partner, or sole proprietor stating that the applicant has not experienced a material adverse change in its financial condition since the date of the latest provided Financial Statements.

(j) A certificate of status from the applicant's state of domicile, along with a certificate of status from the State of Florida, issued within the last six (6) months.

(k) If the name of the entity has changed in the last three (3) years, documentation of the change as filed with the applicant's state of domicile.

(l) Experience modification promulgation worksheet for the current and two (2) preceding years as set forth in the NCCI Experience Rating Plan Manual for Workers' Compensation and

Employers Liability Insurance (filed and approved by the Florida Office of Insurance Regulation).

(m) A Security Deposit that conforms to the requirements of Rule 69L-5.218, F.A.C.

(n) Proof of a Specific Excess Insurance Policy that conforms to Rule 69L-5.219, F.A.C.

(4) Upon receiving the application, the Association shall review the application. Any additional information needed to complete the application shall be requested within thirty (30) days.

(5) The application is not complete for purposes of Section 120.60, F.S., until all of the above requirements are met and the required documents are submitted to the Association. The Department shall not approve any application for self-insurance until the application is complete including the submission of the Security Deposit, proof of Specific Excess Insurance Policy and Certification of Servicing for Self-Insurers.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

### **69L-5.227 Alien Corporations Additional Requirements**

(1) An Alien Corporation applying for self-insurance must submit the following documentation in duplicate at the time of application in addition to the application requirements outlined in Rule 69L-5.225, F.A.C.:

(a) An opinion from an attorney, whose qualifications are deemed satisfactory to the Department, that states that the Alien Corporation's country of domicile has substantially similar laws with respect to the jurisdiction of the Department and the Courts of the State of Florida for the purpose of securing timely payment of all current and future workers' compensation claims of the Alien Corporation.

(b) A stipulation that, notwithstanding other rights, all matters related to the self-insurance authorization and to workers' compensation claims under Chapter 440, F.S., will be resolved in Florida Courts under Florida law.

(c) Designation of a general agent for service of process in Florida.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

### **69L-5.228 Termination**

(1) A FSIGA Member who obtains replacement coverage and desires to terminate its self-insurance authorization shall advise the Association in writing within thirty (30) days of the desired termination date and shall provide proof of replacement coverage in the form of a certificate of insurance effective as of the desired termination date. If a certificate of insurance effective as of the desired termination date cannot be provided, then:

(a) If the certificate of insurance indicates an effective date prior to the desired termination date, the certificate must be amended to show Florida being endorsed onto the policy effective as of the desired termination date or a copy of the endorsement itself must be attached.

(b) If the certificate of insurance indicates an effective date subsequent to the desired termination date, the self-insurance authorization shall be terminated as of the effective date of the certificate of insurance.

(c) If a FSIGA Member no longer has employees in the State of Florida and desires to terminate its self-insurance authorization, the FSIGA Member shall so advise the Association in writing within thirty (30) days of the desired termination date and shall provide proof that it no longer has employees in the State of Florida.

(2) A FSIGA Member who voluntarily terminates its self-insurance authorization or whose self-insurance authorization is revoked, on or after January 1, 1991, shall continue to file all reports required by this rule or Chapter 440, F.S., with the Association upon termination or revocation, until such time as the FSIGA Member has demonstrated to the Association that there is no remaining value to the claims incurred while the FSIGA Member was self-insured.

*Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented*

*440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.*

## **QUALIFIED SERVICING ENTITIES**

### **69L-5.229 Application Process**

(1) Application to become a Qualified Servicing Entity shall be made on Form DFS-F2-SI-22 (Qualified Servicing Entity Application). Entities may apply to become a Qualified Servicing Entity in any or all of the following: claims-adjusting, loss control or safety engineering. The application shall be submitted to the Division at least ninety (90) days prior to the desired effective date. The application may be obtained at:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, FL 32399-4224

(a) Entities that are not insurance companies licensed to write workers' compensation insurance by the Florida Office of Insurance Regulation shall include the following in the application package:

1. A completed Form DFS-F2-SI-22 (Qualified Servicing Entity Application), as incorporated by reference into Rule 69L-5.231, F.A.C.

2. Proof that the management and ownership of the Qualified Servicing Entity is competent, trustworthy and possesses managerial experience that would make the proposed operation beneficial to the workers covered. In determining competency the Department shall consider the applicant's claims-handling history. If the applicant's history contains any of the following it shall be considered a demonstration of a lack of competency:

a. A repeated pattern or practice of questionable claims-handling techniques pursuant to Sections 440.525 or 440.20, F.S.,

b. A repeated pattern or practice of unreasonably controverting claims,

c. A repeated pattern or practice of failing to pay compensation orders as required by statute;  
or,

d. A repeated pattern or practice of arbitrarily or unreasonably disallowing or reducing payments to healthcare providers pursuant to Section 440.13(7)(f), F.S.

(b) A completed Form DFS-F2-SI-27 (Biographical Statement and Affidavit), as incorporated by reference into Rule 69L-5.231, F.A.C., for each owner and member of management, along with a brief resume.

(c) Independent background investigation reports on the owners and management performed by a company approved by the National Association of Insurance Commissioners (NAIC).

(d) Proof that the applicant has a sufficient number of workers' compensation claims adjusters licensed by the State of Florida and loss control and safety engineering personnel employed on a full-time basis to meet the needs of all self-insurers with which it intends to contract. The following information shall be submitted for each employee:

1. A copy of their Florida Adjusters License, for the adjusters.

2. A copy of a current resume for loss control and safety engineering personnel.

(e) Proof of a physical location within the State of Florida separate from the client's location. If the Qualified Servicing Entity is a subsidiary of the self-insurer that it services, then the physical location may be the same as that of the self-insurer.

(f) Proof that they have within the State of Florida, an insurance professional qualified in the field of workers' compensation and authorized to act in all matters concerning the company's claims-handling.

(g) A notarized statement that the Qualified Servicing Entity utilizes only authorized rehabilitation services pursuant to Section 440.491(7), F.S.,

(h) Two (2) letters of recommendation from prior or current customers.

(i) A statement detailing the record handling and maintenance practices, and,

(j) A copy of the standards and procedures used to develop safety programs for their clients if applicable.

(2) Entities that are insurance companies licensed to write workers' compensation insurance by the Florida Office of Insurance Regulation shall include the following in the application package:

(a) A completed Form DFS-F2-SI-22 (Qualified Servicing Entity Application), and

(b) Proof of their certificate of authority.

(3) The entity submitting an application must have no outstanding penalties or fines owed.

(4) The entity submitting an application must be approved by the Department before engaging in business in Florida as a Qualified Servicing Entity.

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

### **69L-5.230 Contracting with a Qualified Servicing Entity**

(1) Each Qualified Servicing Entity shall file Form DFS-F2-SI-19 (Certification of Servicing for Self-Insurers) within thirty (30) days of entering into a contract for servicing.

(a) For Governmental Entities, Form DFS-F2-SI-19 shall be obtained from and submitted to the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, FL 32399-4224

(b) For FSIGA Members, Form DFS-F2-SI-19 shall be obtained from and submitted to the:

Florida Self-Insurers Guaranty Association, Inc.

1427 E. Piedmont Drive, 2<sup>nd</sup> Floor

Tallahassee, FL 32308

(2) Each contract entered into by a Qualified Servicing Entity shall be open for inspection by the Division.

(3) Upon termination of a contract for servicing, the Qualified Servicing Entity agrees it shall continue to provide claims adjusting services on all claims incurred during the contract period for ninety (90) days if requested to do so by the self-insurer. The Qualified Servicing Entity shall be entitled to payment for its services at the rate agreed upon by the parties in the contract.

(4) If a self-insurer fails to adequately fund claims or becomes insolvent, the Qualified Servicing Entity shall immediately notify the Department or Association as appropriate. The Qualified Servicing Entity shall provide claims adjusting services for up to ninety (90) days or until relieved of this responsibility by the Division or the Association. The Qualified Servicing Entity shall not be required to pay claims or otherwise incur liabilities for unpaid claims due to the self-insurer's insolvency or failure to adequately fund claims if the Department or the Association is promptly notified. The Qualified Servicing Entity shall be entitled to payment for its services at the rate agreed upon by the self-insurer in the contract.

(5) When claims files and claims servicing responsibilities are transferred to a new Qualified Servicing Entity, the previous Qualified Servicing Entity shall provide an accounting of all claims files and claims data sufficiently detailed to permit the new Qualified Servicing Entity of the self-insurer to establish accurate claims, reserving, and accounting data.

(6) Files containing the records of the self-insurer's claims are the property of the self-insurer. Upon termination of the contract, the files shall be transferred to the new Qualified Servicing Entity or to the self-insurer along with the responsibility for handling them, and

(a) All files shall be transferred within thirty (30) days upon termination of the contract.

(b) Qualified Servicing Entities shall maintain in Florida, copies of all records relating to the self-insurer's claims that they service. The copies shall be sufficient in type and quantity to verify the accuracy and completeness of all reports and documents submitted to the Division.

(7) The Division shall be notified within thirty (30) days of any change in the location of any records.

(8) Records shall be open for inspection by representatives of the Division or Association during regular business hours. All records shall be retained for five (5) years.

(9) Qualified Servicing Entities may be audited by the Division without prior notice. If the Audit finds any of the following it shall be considered good cause for revocation of the Qualified Servicing Entity's authorization.

(a) A repeated pattern or practice of questionable claims-handling techniques pursuant to Sections 440.525 and 440.20, F.S.,

(b) A repeated pattern or practice of unreasonably controverting claims,

(c) A repeated pattern or practice of failing to pay compensation orders as required by statute, or

(d) A repeated pattern or practice of arbitrarily or unreasonably disallowing or reducing payments to healthcare providers pursuant to Section 440.13(7)(f), F.S.

(10) Failure to comply with Rule 69L-24, F.A.C., shall be considered good cause for revocation of the Qualified Servicing Entity's authorization.

(11) Each Qualified Servicing Entity shall file with the Division no later than March 1 of each year, Form DFS-F2-SI-23 (Qualified Servicing Entity Annual Report Form), as incorporated by reference into Rule 69L-5.231, F.A.C. A copy of Form DFS-F2-SI-23 is available at the:

Department of Financial Services

Division of Workers' Compensation

Bureau of Monitoring and Audit/Self-Insurance

200 East Gaines Street

Tallahassee, FL 32399-4224

(12) A finding by the Department of repeated questionable claims handling techniques, or a pattern or practice of unreasonable delay in the handling of claims, or of repeated unreasonably

controverting claims, or of a repeated practice of failing to pay compensation orders as required by statute, or of a repeated practice of arbitrarily or unreasonably disallowing or reducing payments to healthcare providers pursuant to Section 440.13(7)(f), F.S., shall be considered good cause for the revocation of the Qualified Servicing Entity's authorization.

(13) Failure to comply with these rules or orders within the time prescribed shall be considered good cause for revocation of the Qualified Servicing Entity's authorization.

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.525(2), 440.591, FS. Law Implemented 440.38(1),(2),(3),440.385(1),(3),(6), 440.525, FS. History – New \_\_\_\_\_.

## **FORMS AND INSTRUCTIONS**

### **69L-5.231 Forms and Instructions**

(1) The forms set forth in subparagraphs (a) through (q) of this subsection, as well as the accompanying instructions to the forms, are hereby incorporated into Chapter 69L-5, F.A.C., by reference. Copies of the forms are available from the Division of Workers' Compensation, Bureau of Monitoring and Audit/Self-Insurance Section, 200 East Gaines Street, Tallahassee, Florida 32399-4224.

(a) Form DFS-F2-SI-1, Application for Self-Insurance (eff. \_\_\_\_\_)

(b) Form DFS-F2-SI-1G, Application for Governmental Self-Insurance (eff. \_\_\_\_\_)

(c) Form DFS-F2-SI-1GEP, Application for Governmental Self-Insurance Estimated Payroll (eff. \_\_\_\_\_)

(d) Form DFS-F2-SI-4F, Self-Insurer's Surety Bond for FSIGA Member (eff. \_\_\_\_\_)

(e) Form DFS-F2-SI-5, Self-Insurer Payroll Report (eff. \_\_\_\_\_)

(f) Form DFS-F2-SI-6, Self-Insurer's Irrevocable Letter of Credit (eff. \_\_\_\_\_)

(g) Form DFS-F2-SI-10, Parental Guaranty and Corporate Resolution (eff. \_\_\_\_\_)

(h) Form DFS-F2-SI-11, Indemnity Agreement (eff. \_\_\_\_\_)

(i) Form DFS-F2-SI-17, Unit Statistical Report (eff. \_\_\_\_\_)

(j) Form DFS-F2-SI-19, Certification of Servicing for Self-Insurers (eff. \_\_\_\_\_)

(k) Form DFS-F2-SI-20, Report of Outstanding Workers' Compensation Liabilities (eff. \_\_\_\_\_)

(l) Form DFS-F2-SI-22, Qualified Servicing Entity Application (eff. \_\_\_\_\_)

(m) Form DFS-F2-SI-23, Qualified Servicing Entity Annual Report Form (eff. \_\_\_\_\_)

(n) Form DFS-F2-SI-27, Biographical Statement and Affidavit (eff. \_\_\_\_\_)

(o) Form DFS-F2-SI-206, Certificate of Self-Insurance (eff. \_\_\_\_\_)

(p) NCCI Form 09-1, Application for Drug-Free Workplace Premium Credit (eff. \_\_\_\_\_)

(q) NCCI Form 09-3, Certification of Employer Workplace Safety Program Premium Credit (eff. \_\_\_\_\_)

Rulemaking Authority 440.38(1),(2),(3), 440.385(6), 440.591, FS. Law Implemented

440.38(1),(2),(3),440.385(1),(3),(6),FS. History – New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Robin Ippolito, Bureau Chief, Bureau of Monitoring and Audit, Division of Workers' Compensation, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:

Alex Sink, Chief of Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: 1/5/2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: 1/23/2009